

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JAN 21 1997

DEPT. OF COMMERCE
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
The Proposed Merger of MCI) CC Docket No. 96-245
Communications Corporation and British)
Telecommunications plc)

COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby submits its comments on the above-captioned applications (pursuant to Sections 214 and 310 of the Communications Act)¹ for approval of the proposed merger of MCI Communications Corporation ("MCI") and British Telecommunications plc ("BT").²

U S WEST views this merger from a unique perspective. U S WEST is, through its subsidiary U S WEST Communications, Inc., an incumbent LEC which provides traditional local exchange services in fourteen states. U S WEST is also, through its subsidiary U S WEST Media Group, Inc., a facilities-based competitive local exchange carrier ("LEC") in other areas of the United States. Finally, through its interests in Telewest, One-2-One and Thompson Directories, U S WEST is a new facilities-based competitor of BT in Great Britain. Accordingly, U S WEST is in the unique position of being an incumbent LEC and a competitive LEC in the United

¹ 47 U.S.C. §§ 214(a) and 310(d).

² See Public Notice, MCI Communications Corporation and British Telecommunications PLC Seek FCC Consent for Proposed Transfer of Control, DA 96-2079, rel. Dec. 10, 1996.

States, and a competitive facilities-based telecommunication provider in Great Britain.

In the Application, MCI and BT wax eloquent and at length about the pro-competitive market conditions in Great Britain, conditions which they contend provide an excellent opportunity for new market entrants to compete against BT (the incumbent LEC and long distance provider in Great Britain).³ In point of fact, this part of the Application is correct -- the competition model in Great Britain is working to encourage competition, especially competition from new facilities-based providers. This competition is accompanied by the results which can be expected from the entry of new facilities-based competitors, namely, new products, innovation and superior service.

The British model is different from the statutory model which exists in the United States under the Telecommunications Act of 1996,⁴ which permits competitors to rely more on the facilities and services of the incumbent LECs. But it is dramatically different from the confiscatory and exploitative model which MCI and AT&T Corp. ("AT&T") have been advocating in the United States. In fact, the arguments now being made by AT&T and MCI in the United States concerning interconnection, unbundling and resale were considered in the United Kingdom and explicitly rejected as being anticompetitive, creating distorted entry signals, and failing to meet cost-benefit tests. BT was extremely vocal in opposing the ideas

³ Application at 23-53.

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act" or "1996 Act").

MCI now advocates in the United States. And the wisdom of the British model is that, under the British structure, BT can honestly assert to this Commission in the Application that reasonable competitive opportunities exist today in Britain.

While U S WEST does not oppose the merger proposed in the Application, we submit that grant of the merger Application should have one significant consequence -- the merged entity ought to be estopped from arguing that competition in the United States cannot develop in the absence of Commission orders requiring that incumbent LEC networks be torn up and the pieces given to MCI/BT at prices which do not reflect a carrier's cost. This argument ought to be prohibited with particular vigor whenever MCI/BT participate in any applications by Regional Bell Operating Companies ("RBOC") under Section 271 of the Act for permission to enter the long distance market within those regions where they provide telephone exchange service as an incumbent LEC.

Telecommunications competition in the United Kingdom has followed a somewhat different course than in the United States. After beginning down the path followed by the United States, Great Britain changed course at the time of the 1989 Duopoly Review. At the time of privatization of British Telecom in the early 1990s, Mercury Communications was also licensed as the exclusive alternative facilities-based operator. The hope was that Mercury would develop into a full-blown second network, offering local as well as long distance services throughout Britain.

Mercury, under the ownership of Cable and Wireless, pursued a cream-skimming strategy similar to MCI's domestic strategies. It built long distance facilities and directly connected mainly to large users in major urban centers. Instead of developing mass market local loops, it preferred to ride on the BT local investments, and paid access charges for that interconnection.

In 1990, Britain's Department of Trade and Industry abandoned the Duopoly Policy, opening to competition telecommunications infrastructure at all levels. Cable television operators were encouraged to apply for telephony licenses, three new wireless operators were licensed to provide mass market Personal Communications Networks ("PCN"), and an open regime for licensing all operators was adopted. Oftel began to shift its emphasis from the protection of consumers from monopoly abuse to creating an environment conducive to facilities-based competition.

This shift in policy is what gave rise to the Infrastructure Competition Model in Britain. Unlike the United States, where telecommunications policy based on the belief in a natural monopoly drove a "one wire" solution (at least until the passage of the 1996 Act), the United Kingdom's policies actively encouraged development of multiple local loops.

Investment came from several sources: cable television operators discovered that they could enjoy economies of scope by offering voice telephone service as an increment over their broadband coaxial networks, at very low incremental costs.

Most of these investors were American telephone companies. Wireless investment also came as PCNs were developed by various partnerships.

The result of these policies was that local loop competition quickly began to flourish in the United Kingdom. Although the Duopoly Policy was abandoned in 1990, by mid-1996, most United Kingdom residential and business customers could choose among at least some of the following for their local dial tone: British Telecom, Mercury Communications, a cable television operator, two cellular operators, and two PCN operators. Ionica, the electric utilities, Metropolitan Fiber Systems and others are also emerging as alternatives.

Each of these operators has its own local loop infrastructure on which its customers originate calls. Moreover, these infrastructure alternatives developed under price cap regulation while retail prices were dropping at more than seven percent per year in real terms. The implication is that, had the United States adopted the British approach in 1984 by eliminating state laws which prevented local loop competition, dropping cable-telco cross ownership restrictions, and allocating spectrum for PCS, similar competitive choices would be available to American consumers today.

In a market with multiple local loop operators, interconnection takes on a whole different meaning than in the model now operative in the United States. The existence of infrastructure-based competitors makes it clear that call origination and call termination are not both essential facilities. The existence of multiple operators offering service to end users and to service providers means that call

origination can be a competitive market. It is no longer a natural monopoly. Call termination, on the other hand, remains an essential facility. Owners of local loop infrastructure need the ability to terminate calls onto other networks and cannot self-provide or purchase termination from someone other than the terminating network operator.

In this environment, the focus of public policy in the United Kingdom shifted from a discussion of equal access and fully allocated costs between service categories to one of any-to-any connectivity in a multi-network environment. While transitional concerns remained about the dominance of BT over prices for call origination, the key policy debate shifted to the price of call termination and number portability. Even debate in 1996 about whether to extend retail price cap regulations focused on their impact on local loop investment. New competitors with their own local loops suddenly gained clarity that cost-based call origination was a bad idea, because the value of their investment could then be captured by service providers.

Greater clarity has also been gained on the nature of essential facilities. Long distance providers who lack their own call origination facilities are customers of local infrastructure owners for call origination, as are information service providers ("ISP"). As customers, they can be victims of abuse or dominance by a dominant provider, but competition and a reasonable make-or-buy decision will undermine that dominance rapidly.

It is also noteworthy that ISPs typically do not terminate calls (as is likewise the case in the United States), while long distance carriers must terminate calls. ISPs are therefore not normally vulnerable to denial of an essential facility as long as call origination is allowed to be competitively provided over multiple infrastructures. But long distance carriers which must terminate calls do need this essential facility from the local infrastructure operator. At the originating end of the call, long distance carriers and ISPs are similarly positioned.

Adoption of the British Infrastructure Competition Model has not hurt either long distance carriers or ISPs. No longer dependent on monopoly offerings for call origination, ISPs and long distance carriers can use their volume buying status as large customers to obtain discounted offerings from infrastructure owners that combine their own value-added or long distance capabilities with the underlying local network to provide innovative services and create new markets.

The danger for public policy in Britain is that long distance operators and ISPs are even more advantaged in the short run if they can get call origination functions at cost. Thus the temptation is to seek regulation (based on cost) of call origination. This is a policy error unsustainable by economic and competition arguments. These pressures confuse policy-making in the United Kingdom. On the one hand, Oftel has pursued successfully the Infrastructure Competition Model. On the other hand, Oftel often continues to view ISPs as facilities-based operators, entitled thereby to interconnection. However, for the most part, Oftel has limited

interconnection to economic interconnection to the actual network operations of other carriers.

And this is a key point. Interconnection in Britain under the Infrastructure Competition Model has been almost totally devoid of the premise which marks much of the competitive analysis in the United States today -- that competition cannot develop unless giant new competitors such as AT&T and MCI/BT have the ability to use the network infrastructure of the incumbents to compete against them -- that is, to compete without constructing facilities. The American statutory model certainly envisions that resale will be a method of competitive entry into local exchange markets, but the 1996 Act also clearly favors network investment and facilities-based competition -- both of which are flourishing under the British Infrastructure Competition Model without any of the dramatic incursions into the property and property rights of incumbent LECs which MCI and AT&T are currently demanding.

The reason the foregoing is relevant is that, with the grant of the merger represented in the Application, the incumbent British dominant carrier will become a major competitive force in the United States. It would be both wrong and unseemly to permit this carrier to demand that competition in the United States can only develop if MCI/BT is given more regulatory advantages in the United States than competitors of BT are given in the United Kingdom. Such an argument would also be palpably and demonstrably wrong, as competition in the United

Kingdom is, as MCI/BT correctly characterize it in their Application, doing very nicely.

Respectfully submitted,

U S WEST, INC.

By: Robert B. McKenna
Robert B. McKenna
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

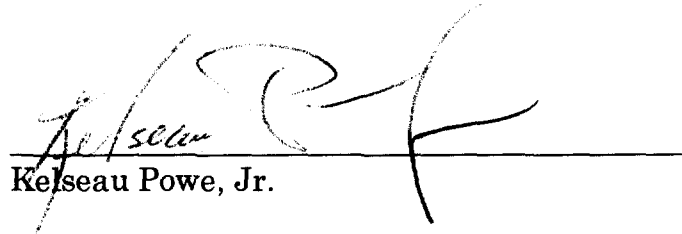
Its Attorney

Of Counsel,
Dan L. Poole

January 24, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 24th day of January, 1997, I have caused a copy of the foregoing **COMMENTS AND PETITION TO DENY** to be served via first-class United States Mail,* postage prepaid, upon the persons listed on the attached service list.**


Kelseau Powe, Jr.

* Via Hand-Delivery

** As required by the December 10, 1996 Public Notice (DA 96-2079), the 3 x 5 diskette with a cover letter is filed with the Office of the Secretary of the FCC, along with the original and hard-copies.

(GN96245.COS.BM/lh)

***Reed E. Hundt**
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

***James H. Quello**
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

***Susan P. Ness**
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

***Rachelle B. Chong**
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

***William E. Kennard**
Federal Communications Commission
Room 614
1919 M Street, N.W.
Washington, DC 20554

***Don Gips**
Federal Communications Commission
Room 800
2000 M Street, N.W.
Washington, DC 20554

***James Hedlund**
Federal Communications Commission
Room 800
2000 M Street, N.W.
Washington, DC 20554

***Regina M. Keeney**
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

***Geraldine Matise**
Federal Communications Commission
Room 230
2000 M Street, N.W.
Washington, DC 20554

***Michele Farquhar**
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, DC 20554

*International Transcription Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

*International Reference Room
Federal Communications Commission
Room 102
2000 M Street, N.W.
Washington, DC 20554

*Wireless Reference Room
Federal Communications Commission
Room 5608
2025 M Street, N.W.
Washington, DC 20554

Colin R. Green
British Telecommunications, PLC
BT Centre
81 Newgate Street
London EC1A 7AJ England

Michael H. Salisbury
Mary L. Brown
Sanford C. Reback
Larry A. Blosser
MCI Communications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006-3606

Joel S. Winnik
David J. Saylor
Hogan & Hartson, LLP
555 13th Street, N.W.
Washington, DC 20004-1109

James E. Graf, II
Joan M. Griffin
Cheryl Lynn Schneider
BT North America, Inc.
Suite 725 - North Building
601 Pennsylvania Avenue, N.W.
Washington, DC 20004

(GN96245.BM/lh)
Last Update: 1/24/97